No. 46

In the Supreme Court of the United States

OCTOBER TERM, 1961

MAURICE A. HUTCHESON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The court of appeals affirmed petitioner's conviction, *per curiam*, without opinion (R. 191–192). The oral "ruling" or opinion of the district court (R. 174), incident to its finding of guilt, is not reported.

JURISDICTION

The judgment of the court of appeals was entered on December 7, 1960 (R. 191–192). A petition for rehearing was denied on January 9, 1961 (R. 192). The petition for a writ of certiorari was filed on February 7, 1961, and was granted on April 3, 1961 (R. 193; 365 U.S. 806). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the inquiry by the Senate Select Committee on Improper Activities in the Labor or Management Field into whether union funds had been used to "fix" a grand jury investigation into the personal affairs of petitioner and other officers of the Carpenters Union was within the committee's authority under its authorizing resolution, and whether the resolution was adopted pursuant to a legitimate legislative purpose.

2. Whether the fact that a state indictment, to which the information sought by the committee indirectly related, was pending against the union officers at the time of the inquiry precluded, or constitutionally could have precluded, the committee from pursuing its inquiry.

3. Whether the possibility that a state prosecutor might seek to show that petitioner had claimed the privilege against self-incrimination in the federal proceeding constitutes a basis for holding that the congressional committee was constitutionally required to refrain from asking any questions which might have any relevance to the pending state case.

4. Whether the fact that the testimony sought from petitioner might have tended to show consciousness of guilt of the offenses charged in the pending state indictment—and on this theory have been admissible against him at his trial thereunder—made it improper or otherwise violative of due process for the committee to require him to state what he knew about the subject under inquiry, albeit petitioner would have been excused from giving the testimony had he

chosen to claim the privilege against self-incrimination.

5. Whether a witness before a congressional committee who has deliberately and repeatedly disclaimed reliance upon the privilege against self-incrimination may insist upon its protection under another name.

CONSTITUTIONAL PROVISION, STATUTE, AND RESOLUTION INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part:

> No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law * * *.

2 U.S.C. 192 (R.S. 102, as amended) provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

Senate Resolution 74, 85th Congress, agreed to January 30, 1957 (103 Cong. Rec. 1264-1265; Govt. Ex. 1, R. 176-177), provided in pertinent part:

Resolved, That there is hereby established a select committee which is authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

* * * * *

STATEMENT

Petitioner was charged in an eighteen-count indictment (R. 4-7), filed February 15, 1960 in the United States District Court for the District of Columbia, with having refused, in violation of 2 U.S.C. 192 (*supra*, p. 3), to answer eighteen questions pertinent to the matter under inquiry, put to him by the Senate Select Committee on Improper Activities in the Labor or Management Field. Having waived his right to a trial by jury (R. 1), he was found guilty by the court (Morris, D. J.) on all counts (R. 174) and was sentenced generally to six months' imprisonment and to pay a fine of $500 (R. 189-190). The court of appeals affirmed the judgment without opinion (R. 191-192).

The pertinent facts may be summarized as follows:

1. The Senate Select Committee on Improper Activities in the Labor or Management Field was

directed by its authorizing resolution (S. Res. 74, 85th Cong., *supra*, pp. 3-4)—

> to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

Commencing June 4 and concluding June 27, 1958, the committee conducted a series of public hearings inquiring into the affairs of the United Brotherhood of Carpenters and Joiners of America (the Carpenters Union) and its officers, including petitioner, its general president (R. 10-97, 106-140, 145-154). The committee, in earlier hearings, had heard considerable testimony as to the misuse of union funds by various union officials for their personal benefit, and the purpose of the hearings here involved, as announced by the chairman of the committee (Senator McClellan) at their commencement, was to pursue that inquiry with particular reference to the Carpenters Union (R. 13). The chairman said (R. 13):

> The Chair may say that during the existence of this committee we have had much information and a great deal of testimony regarding the misuse of union funds, regarding personal financial gain and benefit and profit and ex-

> penditure of such funds by union officials, and we are still pursuing that aspect of labor-management relations.
>
> * * * * *
>
> In this particular instance, there is indication that the union membership have again been imposed upon by transactions that have occurred that we will look into as the evidence unfolds before us.

Petitioner appeared before the committee on the final day of the hearings, June 27, 1958 (R. 88, 90–151). To indicate the context of the questions which petitioner refused to answer, to show their relevance to the inquiry, and to examine the grounds of petitioner's refusals, we refer, at the outset, to an Indiana indictment in Marion County which was pending against petitioner and two other officers of the Carpenters Union at the time of the hearings (R. 91) and also to proceedings which occurred on the day before petitioner's appearance before the committee.

2. On February 18, 1958 (R. 91), some four months prior to the hearings, petitioner and two other Carpenters Union officers—Frank Chapman, the general treasurer, and O. William Blaier, the second general vice president (R. 21, 76)—had been indicted by the State of Indiana in Marion County (Indianapolis), Indiana, for bribing and conspiring to bribe an Indiana state official as part of a scheme to enrich themselves through the sale to the State of rights of way over certain land (R. 182–189). Specifically, Indiana had charged that petitioner, Chapman, and Blaier, on or about May 1, 1956, conspired to offer (count 1)

and offered (count 2) to pay to Harry Doggett, an official of the State Highway Department, one-fifth of all profits to be realized by the defendants from grants to the State of rights of way over real estate owned by them, as bribes to influence Doggett to approve such grants (R. 182–189). The State also alleged that Doggett, in furtherance of the conspiracy, subsequently approved specific conveyances and was paid bribes amounting to $15,300 (R. 183–189).[1]

One aspect of the McClellan committee's inquiry was whether union funds had been used in August 1957 to bribe Metro Holovachka, the county prosecutor for *Lake* County (Gary), Indiana, in order to induce him to terminate a grand jury investigation which he had been conducting into the activities of petitioner, Chapman, and Blaier—the same activities for which they were later indicted in *Marion* County (see *supra*). As indicated below, the committee expressly refrained from questioning petitioner concerning the subject matter of the Marion County indictment as such, *i.e.*, the land transactions in which he, Chapman, and Blaier were involved and the alleged bribery of a highway official in connection with those transactions.

3. The matter of the use of union funds to influence Holovachka's conduct of the Lake County investigation was first raised at a public hearing of the committee on June 26, 1958, the day preceding petitioner's

[1] We note, for the Court's information, that petitioner and his two co-defendants were tried and convicted under the Marion County indictment in November 1960. That conviction is currently pending on appeal to the Supreme Court of Indiana.

appearance. Petitioner, though he did not testify on the 26th, was present in the hearing room during the proceedings (R. 10-11).

Maxwell Raddock, the first of several witnesses to testify on the 26th (R. 16), was a New York businessman and publisher who had recently published for the Carpenters Union (pursuant to a contract with its executive board, headed by petitioner) a book entitled *Portrait of an American Labor Leader: William L. Hutcheson.* The book was a biography of petitioner's father, deceased former president of the Union, for the writing and production of which Raddock was paid $310,000 in Union funds. On the basis of evidence previously heard, the committee had reason to believe—and later reported to the Senate—that Raddock had been "overpaid some $200,000 [illegible] this work." The committee also had information suggesting that Raddock, using Carpenters Union funds, had played a significant role in causing Holovachka to abandon the Lake County grand jury investigation into the affairs of petitioner, Chapman, and Blaier (for which

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[1] See Second Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rept. No. 621, 86th Cong., 1st sess., Part 2, October 23, 1959, pp. 501-562 (Govt. Ex. 6, R. 159-162, 170-173). The evidence on which this conclusion of the committee was based is summarized at pp. 532-550 of the Report. Among other things, the evidence showed that "though Raddock was paid some $70,000 for research and writing, [illegible] heavily plagiarized huge sections of the book from other more knowledgeable authors." Second Interim Report, *supra*, p. 538. Cf. the remark of Senator Ervin, a committee member, that "The evidence before this committee indicates very strongly that you [petitioner] could have gotten this book written by the foremost historian in the United States for far less money [than $310,000]" (R. 115).

they were later indicted in Marion County). Records of the Carpenters Union showed, for example, that on August 11, 1957—nine days prior to the announcement by Holovachka that the Lake County investigation was being terminated (R. 22; see *infra*, p. 11)—Raddock, at Carpenters Union expense, flew from New York to Chicago, and that during the following six days (likewise at Union expense) he stayed at the Drake Hotel in that city (R. 139-140). Other records in the committee's possession showed that petitioner and Blaier were also in Chicago during this period and that Blaier stayed at the same hotel as Raddock (R. 84, 146). Raddock's name, moreover, had been directly associated with a reported "fix" of the Lake County investigation in an anonymous telephone call which a reporter for an Indianapolis newspaper, John Hackett, received on August 19, 1957, the day preceding Holovachka's announcement of the cessation of the grand jury inquiry (R. 42-43).[4]

Raddock, when asked by the committee on the 26th if he knew Holovachka, invoked his privilege against

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[4] The caller, according to Hackett's affidavit, said (R. 43):

"Thought you people would like to know that Gary Carpenter's [sic] case has been all taken care of by the Teamsters. There will be no indictment today. You can check the telephone room in Chicago and find that Max Rattock [*sic*] put through a call to Charles Johnson, Jr. [a Carpenters Union vice president], last night. This came right after the Teamsters had a meeting in Gary last Wednesday night."

When asked by the affiant to identify himself, the caller said:

"Me! I'm connected with it and I can't give you my name. Check it out and see."

Although the committee was forestalled in its efforts to ascertain the precise role played by the Teamsters Union in the Lake County investigation when several witnesses claimed privilege (see *infra*, pp. 10, 12, 13), it developed considerable evi-

self-incrimination (R. 18). He continued to do so when asked whether he knew Michael Sawochka, secretary-treasurer of Local 142 (Gary) of the Teamsters Union (R. 19), whether James Hoffa, Teamsters Union president, was "contacted" in connection with "matters * * * [which] were being presented to a grand jury in Lake County" (R. 20), and whether "he [Hoffa], in turn, contacted Mr. Sawochka" (R. 20-21).

The committee counsel, in order to make clear to Raddock "the subject matter being inquired into" and as a basis "upon which to predicate further testimony", at this point read a summary of "background" information in the possession of the committee (R. 21, 23-24). The committee had information, counsel said, that in June of 1956 certain individuals, including Chapman, the Carpenters Union general treasurer, purchased land in Lake County, Indiana; that the property was in an area through which a proposed public highway was to pass; that several months later the land was sold to the State "at a $78,000 profit on

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dence of a connection. Thus, it established that Holovachka, shortly following his announcement of the abandonment of the investigation, was the recipient, through certain complicated transactions, of Teamsters Union funds. See Hearings before the Select Committee on Improper Activities in the Labor or Management Field, 85th Cong., 2d sess., Part 31, May 27, June 4, 5, 6, 9, 25, 26, and 27, 1958, pp. 12089-12103 (received in evidence, R. 155-157); Second Interim Report of the Select Committee, S. Rept. No. 621, 86th Cong., 1st sess., Part 2, October 23, 1959, pp. 558-560, 592 (Govt. Ex. 6, R. 159-162, 170-173). The committee also had evidence that during the week preceding Holovachka's announcement Raddock, following communication between petitioner and the head of the Teamster's Union, James Hoffa, placed several long-distance telephone calls

a $20,000 investment"; that part of the profits were paid by Chapman to "a deputy in the right-of-way office of the Indiana Highway Department"; that petitioner and Blaier, the second general vice president of the Carpenters Union, were also "[i]nvolved in this situation"; that petitioner, Blaier, and Chapman, when questioned about the matter before the "Gore committee" (the Subcommittee on Public Roads of the Senate Committee on Public Works) during hearings held in May and June of 1957, "invoked the fifth amendment"[4]; that, beginning July 22, 1957, the matter was presented to the Lake County grand jury by the county prosecutor, Holovachka; that the grand jury recessed on July 23 and thereafter considered the matter for an additional day on August 19, 1957; that petitioner, Blaier, and Chapman did not appear before the grand jury because Holovachka "did not subpoena them, or could not"; that on August 20 Holovachka announced that "no indictments * * * would be forthcoming" because of "lack of jurisdiction"; that, "through an attorney whom Holovachka refused to identify", the Union officers "made restitution to the State of the $78,000 profit made on the deal"; and that subsequently petitioner, Blaier, and Chapman were indicted "on this deal"[5] in Marion County, Indiana (R. 21–22).

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to Michael Sawochka, a Teamsters official in Gary. Second Interim Report, pp. 555, 592.

[4] See *Investigation of Highway Right-of-Way Acquisition—State of Indiana*, Hearings before a Subcommittee of the Committee on Public Works, United States Senate, 85th Cong., 1st sess., May 15, 16, and June 10, 1957, pp. 161 *ff*.

[5] *I.e.*, the "deal" involving the land transactions. See *supra*, pp. 6-9.

"We are inquiring", the committee counsel said (R. 23),

> into the situation in connection with the presentation before the grand jury in Lake County, Ind.; the intervention by certain union officials into that matter, and the part that was played by Mr. Hutcheson himself, Mr. Sawochka, the secretary-treasurer of local 142 of the Teamsters, and Mr. James Hoffa, the international president of the Teamsters.

In response to a question by the chairman as to whether there was "information that either union funds were used in the course of these transactions or that the influence of official positions of high union officials was used in connection with this alleged illegal operation", counsel said that there was "information along both lines" (R. 23). The chairman, after referring to another situation in the committee's experience in which union funds were used for the purpose of "fixing a case", said (*ibid.*):

> That is the interest of this committee in a transaction of this kind or alleged transaction of this kind, to ascertain again whether the funds or dues money of union members is being misappropriated, improperly spent, or whether officials in unions are using their position[s] to intimidate, coerce, or in any way illegally promote transactions where the public interest is involved.

Following counsel's "background" summary, the questioning of Raddock was resumed. He continued, however, to claim his Fifth Amendment privilege as to all relevant questions (R. 27–39, 42–44).

4. Other witnesses heard on the same day (June 26th) as Raddock were Sawochka, the secretary-treasurer of Teamsters Local 142 (R. 45), Joseph Sullivan, an attorney for Local 142 (R. 56, 57), and Blaier, the second general vice president of the Carpenters Union and one of petitioner's codefendants under the Marion County indictment (R. 76, 77). Sawochka and Blaier, like Raddock, refused to answer all pertinent questions (R. 47–52, 82–86).* Sullivan answered some questions, but refused to answer others (R. 56–76) on the ground that they invaded the "attorney-client" privilege (R. 58, 65–66, 69–72). He acknowledged that he had physically delivered the check by which "restitution" had been made to the State of Indiana (see *supra*, p. 11), but refused to identify the person from whom he received the check (R. 70–72).

During the interrogation of Blaier, his counsel (who also represented petitioner, see R. 76, 90), called the committee's attention to the fact that the witness was one of the defendants named in the Marion County indictment and sought assurance from the committee that his client would not be interro-

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*Sawochka invoked the privilege against self-incrimination (R. 47–52). Blaier based his refusal on the ground that the question, in each instance, related "solely to a personal matter not pertinent to any activity which this committee is authorized to investigate, and also because it might aid the prosecution in the case in which I am under indictment" (R. 82, 83–84, 86). The committee, possibly because it thought Blaier intended by this statement to invoke the privilege against self-incrimination (see R. 86), did not order him to answer.

Nor were the hearings "tainted" by the fact that at their close, after the committee had completed its legislative function of gathering the facts pertaining to this particular subject of inquiry, the chairman offered to cooperate with Indiana's law enforcement officials if they indicated an interest in inquiring further into the details of what appeared to be an offense against the laws of Indiana, evidence of which had been uncovered by the committee in discharging its federal legislative duties. This offer of appropriate cooperation between federal and state officials does not show that the committee's purpose in conducting the inquiry was exposure for the sake of exposure or that it was otherwise inconsistent with proper legislative ends. In any event, the motives of particular committee members cannot vitiate an investigation which has been instituted by a House of Congress if that body's legislative purpose is being served.

II

The fact that at the time of the committee's inquiry there was pending against petitioner a state indictment, to which the information sought by the committee indirectly related, could not constitutionally preclude the committee from pursuing its inquiry.

The claim that the committee sought to "pretry" the state charges pending against petitioner and his fellow union officials Blaier and Chapman in Marion County, relating to their alleged bribery of an Indiana highway official in connection with the so-called "land deal" in Lake County, is baseless. The committee

scrupulously refrained from inquiring about the subject matter of that indictment. It may be—we do not dispute the point—that if petitioner, in response to the committee's inquiries concerning the suspected "fix" of the Lake County grand jury investigation, had admitted using union funds to bribe the Lake County prosecutor, his admission would have been admissible against him at his trial on the Marion County indictment as evidence of consciousness of guilt (*i.e.*, of the "land deal" charges, which the Lake County grand jury had under investigation). But the pendency of the Marion County indictment at the time of the committee hearing could in no event have precluded the committee from pursuing its proper legislative inquiry into whether union funds had been used for the improper purpose of "fixing" a case.

This would be true even if the pending indictment had been a federal one. *Sinclair* v. *United States*, 279 U.S. 263, 295. While the pending suit involved in that case was a civil action, it had unmistakable criminal overtones, and the rationale of the decision is broad enough to apply where the pending action is criminal in nature. The pending prosecution here, moreover, was a state prosecution. It would not be consistent with the Supremacy Clause to hold that a committee of Congress, inquiring into a matter undeniably germane to a valid mandate from its parent body, can be frustrated in its investigation by the fact that the information it seeks happens also to be relevant to the charges of a pending state indictment.

gated "on that subject" (R. 77). The chairman, in accordance with the committee's regular rule in such situations, stated that it would be the "rule or policy" of the committee not to question the witness on the "subject matter of the indictment"—though it might come within the committee's jurisdiction and sphere of interest—because the committee "recognize[d] that, where [a witness] is under indictment he should not be compelled to be a witness against himself on the subject matter involved in the indictment" (R. 77–78). Counsel sought an "understanding" with the chairman that the area to be avoided in the questioning would include, in addition to the specific subject matter of the indictment, matters which, though occurring after the events for which the witness was indicted, "might be used by the prosecution" to show the "origin and continuance" of the matters charged in the indictment. The chairman, however, declined to enter into any such understanding or agreement with counsel (R. 78). Advising counsel for the witness to "feel at liberty to [address the Chair]" if a question were asked to which he desired to object (R. 77), he directed the committee counsel to proceed with the interrogation (R. 78).

The committee counsel stated that he had no intention of going into the "matters for which Mr. Blaier is presently under indictment, namely the road situation out in Indiana" (R. 78), but that he did not propose to exclude from his inquiries the matter of the "fix" of the Lake County grand jury investigation (R. 83). On the latter subject the witness was

in fact questioned, both by the committee counsel and the chairman (R. 83–86).

Although the committee declined to accede to the request of Blaier's attorney that his client not be questioned with respect to the circumstances of Holovachka's abandonment of the Lake County investigation, there was at no time any question of the right of the witness to invoke his privilege against self-incrimination in respect to any phase of that subject that he might desire—as Raddock and Sawochka had been permitted to do earlier (*supra*, pp. 10, 12, 13).[1] Indeed, it appears that the committee was under the impression that Blaier intended to invoke his privilege against self-incrimination on the occasions when he refused—as he repeatedly did (R. 83–86)—to answer questions. See note 6, *supra*, p. 13.

5. On the following day, June 27, 1958, prior to the commencement of petitioner's interrogation, his counsel advised the committee that petitioner would "not resort to the guaranties of the fifth amendment" (R. 91). After referring to the pending Marion

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[1] The chairman, for example, in interrogating the witness about a matter (a Drake Hotel bill) pertaining to the termination of the Lake County grand jury investigation, remarked that the matter related to a period a year later than the incidents involved in the pending indictment, so that any connection between it and the subject of the indictment was, at most, "by indirection." While, for this reason, the chairman declined to consider the matter one falling within the committee's policy of self-restraint, he made it clear that if the witness "want[ed] to exercise [his] privilege [against self-incrimination], that [would be] all right" (R. 86). Cf. R. 85.

County indictment (*supra*, pp. 6–7), counsel stated to the committee that (R. 92; see also R. 93–94)

> any inquiry * * * into or about any of the facts related to or which might be related to such indictment and the transactions recited therein, however remote the same may be, and whether occurring before or after the transaction[s] recited in the indictment, or as to any matter which might be attempted to be used in furtherance of the prosecution thereof, would be improper, without appropriate pertinency and outside the scope of the investigation which this committee is authorized to make.

The chairman replied that the committee would proceed as on the previous day, and that if counsel wished to raise any issue with respect to the jurisdiction of the committee or the propriety of a specific question he should do so as the interrogation proceeded (R. 94).

After petitioner had been asked by the committee counsel, and had answered, a series of questions concerning his career with the Carpenters Union (R. 94–96), he was asked how long he had known Max Raddock. His counsel inquired whether the "line of questioning" was going to relate to "the book" (*Portrait of an American Labor Leader: William L. Hutcheson;* see *supra*, p. 8) or to "the Lake County transactions". The committee counsel, observing that "Mr. Raddock is not under indictment in any conspiracy with Mr. Hutcheson", stated that he was "just going to ask Mr. Hutcheson about his relationship with Mr. Raddock" (R. 96). The chairman

thereupon specified, as follows, the matters concerning which petitioner would be interrogated and those about which he would not be questioned (R. 96–97):

> Let the Chair say this: I have gone into the matter a little to ascertain where the line of questioning may go. He will be interrogated regarding the book. He will also be interrogated regarding the use of union funds in a project which, on the face of it at least, appears to have the objective which was to obstruct justice.
>
> So he will be interrogated about those things. As to any act covered in the indictment for the period of which the crime is alleged in the indictment, he will not be interrogated. But the matters that he will be interrogated about are subsequent to the time that the offense in the indictment was charged.

Shortly thereafter, following a series of questions and answers relating to his associations with Raddock in connection with the book (R. 97, 106–110, 113–121), petitioner was asked, and refused to answer, the questions which form the bases of the several counts of the instant indictment (R. 123–124, 126–127, 129–130, 136–137, 145–146, 147–150, 151). The questions, each of which, either on its face or in context, was related to the committee's inquiry into the circumstances surrounding the termination by Holovachka of the Lake County grand jury investigation and whether union funds were used to procure its abandonment, were as follows:

> Has he [Mr. Raddock] received from the union payment for acts performed in your be-

half and for you as an individual? (R. 123) (Count One, R. 5).

Have you, unrelated to this offense charged in the indictment now against you, engaged the services of Mr. Raddock, and have you paid him out of union funds for the performance of those services, to aid and assist you in avoiding or preventing an indictment being found against you or being criminally prosecuted for any other offense other than that mentioned in this indictment? (R. 126) (Count Two, R. 5).

Did you engage the services of Mr. Raddock and pay him for those services out of union funds to contact, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind.? (R. 126) (Count Three, R. 5).

Have you paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years? (R. 129) (Count Four, R. 5).

Have you used union funds to pay Max C. Raddock for any services rendered to you personally, wholly disassociated from any matters out of which the pending criminal charge arose? (R. 129) (Count Five, R. 5).

Was he [Raddock] there [in Chicago] on union business for which the union had the responsibility for payment? (R. 136) (Count Six, R. 5).

Were Mr. Raddock's expenses paid on that trip by union funds while he was on union business? (R. 140) (Count Seven, R. 5).

You were out in Chicago at the same time [as Raddock]? (R. 146) (Count Eight, R. 6).

Were your expenses on that Chicago trip paid by the union? (R. 146) (Count Nine, R. 6).

Were you out in Chicago at that time on union business? (R. 147) (Count Ten, R. 6).

Do you know Mr. James Hoffa? (R. 148) (Count Eleven, R. 6).

Did you make an arrangement with Mr. Hoffa that he was to perform tasks for you in return for your support on the question of his being ousted from the A.F.L.-CIO? (R. 148) (Count Twelve, R. 6).

Isn't it a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957? (R. 148) (Count Thirteen, R. 6).

And wasn't that telephone call in fact paid out of union funds, the telephone call that you made to him on August 12? (R. 149) (Count Fourteen, R. 6).

Do you also know Mr. Sawochka, of the Brotherhood of Teamsters? (R. 149) (Count Fifteen, R. 6).

Isn't it a fact that you had Mr. Plymate, who is a representative of the Brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957? (R. 149) (Count Sixteen, R. 6).

And isn't it a fact that that telephone bill and that telephone call was paid out of union funds? (R. 150) (Count Seventeen, R. 7).

Did you have any business with local 142 of the Teamsters in Gary, Ind.? (R. 151) (Count Eighteen, R. 7).

Petitioner refused to answer each question on the ground that it related (R. 123, 126, 129, 137, 140, 146, 147–150, 151)—

> solely to a personal matter, not pertinent to any activity which this committee is authorized to investigate, and also [because] it relates or might be claimed to relate to or aid the prosecution in the case in which I am under indictment, and thus be in denial of due process of law.

In each instance, the committee overruled the stated ground of refusal and directed petitioner to answer; petitioner, on each occasion, persisted in his refusal (R. 123–124, 126–127, 129–130, 137, 140, 145, 146, 147–150, 151.)

Repeatedly during the questioning, petitioner, in response to committee inquiries, explicitly disclaimed reliance on the privilege against self-incrimination (R. 125, 127, 130, 135, 146). He stated his concern that there "be no actual or apparent violation on [his] part" of (R. 147)—

> the provisions of the A.F.L.–CIO code of ethics concerning union officers who invoke the fifth amendment when asked about their official conduct * * *.

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* On January 28, 1957, the Executive Council of the A.F.L.–C.I.O. while recognizing and defending the right of every individual to the "protections afforded by the Fifth Amendment", stated in an official statement, later incorporated into the organization's Code of Ethics, that "It is the policy of the A.F.L.–C.I.O. however, that if a trade-union official decides to invoke the Fifth Amendment for his personal protection and to avoid scrutiny by proper legislative committees, law-enforcement agencies or other public bodies into alleged corrup-

6. Following petitioner's testimony, the Chairman, at the conclusion of the day's proceedings (which also concluded the hearings), summarized the evidence which the committee had heard during the hearings and stated certain of his conclusions (R. 152–154). He said in part (R. 153–154):

* * * * *

> The testimony further indicates that certain high officials of both the Teamsters and the Carpenters Unions, two of the largest unions in the country, with the help and assistance of Mr. Raddock were involved in a conspiracy to subvert justice in the State of Indiana.
>
> All the facts regarding this conspiracy undoubtedly have not been developed by the committee.
>
> Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter.

* * * * *

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tion on his part, he has no right to continue to hold office in his union." *New York Times*, January 29, 1957, p. 18, col. 5. The statement was ratified and approved in a resolution adopted by the general convention held in December 1957. *New York Times*, December 13, 1957, p. 24, cols. 7–8. As noted in its official publication, *AFL–CIO Codes of Ethical Practices* (Publication No. 50, May, 1958), p. 13, this statement of policy does not require "automatic" expulsion of any trade union leader who invokes the Fifth Amendment. It is where, upon investigation, "it is found that the Fifth Amendment was in fact invoked as a shield to avoid discovery of corruption on his part" that the official is deemed to have "no right to continue to hold trade union office." *Id.*, p. 14.

At petitioner's trial, Senator McClellan testified as follows with respect to the foregoing statement (R. 165):

> Our legislative function had been performed in seeking information regarding crimes and improper activities. Some evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union. It has been our practice to cooperate with state and federal officials where any evidence is developed before us with respect to a crime having been committed. Our legislative purpose is to search out and find if crime has been committed.
>
> My statement here is to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them.

In finding petitioner guilty, Judge Morris made an oral "ruling" in which he held that "[t]he Sacher case" (*Sacher* v. *United States*, 252 F. 2d 828 (C.A. D.C.), reversed on other grounds, 356 U.S. 576) was "absolutely dispositive of what is involved in this case."* Pointing out that petitioner disclaimed

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*In the *Sacher* case, one of the dissenting opinions expressed the view that the courts "should be slow * * * to hold" that a person could be compelled to be a witness against himself "by supplying *obviously* self-incriminating information, particularly when the area protected by the First Amendment is threatened, though he does not rest his objection on the Fifth." 252 F. 2d at 839-840 (emphasis in the original). The court of appeals, in rejecting this view, said (at 837):

"The short and simple answer to this is that every witness who thinks any answer will or may incriminate him has an

reliance upon the "immunity clause of the Fifth Amendment", the court held that "the only way he could properly seek" the protection of that clause was to invoke it (R. 174).

SUMMARY OF ARGUMENT

I

The committee's inquiry into whether union funds had been used by union officers to "fix" a state grand jury investigation into their personal affairs was germane to a valid legislative purpose—the committee's authorized study of the "extent to which criminal or other improper practices are, or have been, engaged in in the field of labor-management relations" in order to "determine whether any changes are required in the laws of the United States" pertaining to this field. That there might be overlap between the areas of activity of a congressional committee and those of a grand jury would not invalidate an investigation conducted by the committee in pursuance of its authorized legislative purpose.

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absolute protection in the Fifth Amendment. Unconsciously, perhaps, the dissent shrinks from 'forcing' a witness to raise the Fifth Amendment because some people may draw dark inferences from its use. Over recent years the frequent employment of the Fifth Amendment has, in the minds of some, brought it into 'disrepute.' The Fifth Amendment plainly—and properly—was intended as a shield against selfincrimination; the First Amendment was not. The use of the First Amendment to shield one from supplying 'obviously incriminating information about himself' would be a perversion of the Constitution, needless so long as the Fifth Amendment stands. * * *"

III

Petitioner's claim that he would have been prejudiced, had he asserted the privilege against self-incrimination, is groundless. The argument is that, if he had claimed the privilege, the fact could have been used against him at the trial of the Marion County indictment. This, he argues, made it a violation of due process for the committee to put him in a position where he was obliged either to claim privilege or to testify under the threat of the contempt sanction.

This line of reasoning necessarily assumes that this Court would be prepared to overrule its unanimous decision in *United States* v. *Murdock*, 284 U.S. 141, holding that the privilege against self-incrimination need not be recognized in a federal inquiry where the feared incrimination relates to a state offense. For if a witness may be compelled to give testimony before a federal body which would incriminate him under state law, it cannot be constitutionally objectionable for the federal authority to excuse him from the necessity of testifying if he is prepared to claim the privilege against self-incrimination. We show in the next Point that there is no occasion to reconsider the *Murdock* rule in this case, in which petitioner not only did not claim, but disclaimed, the privilege against self-incrimination. But the argument has other fatal defects.

1. Even if, on its merits, the argument were sound, it would be a sufficient answer, we believe, that it was not made to the committee. A proper respect for the committee required that if this was petitioner's reason for declining to invoke his privilege

he or his attorney should have apprised the committee of the difficulty so that an appropriate ruling might be made. The only reason which petitioner gave to the committee was quite different: "concern" that there "be no actual or apparent violation on [his] part" of the provision of the A.F.L.-C.I.O. Code of Ethics which states that a union official who invokes his Fifth Amendment privilege in order to avoid official scrutiny into alleged corruption on his part may not continue to hold his union office.

2. As to the merits of the contention, it has been clear since *Slochower v. Board of Education*, 350 U.S. 551, that it is violative of due process for any government, state or federal, to permit the use against a person of an adverse inference drawn from his invocation of his Fifth Amendment privilege. Indiana, for example, certainly could not have adduced at petitioner's trial, as part of its case in chief, the fact that petitioner had pleaded his Fifth Amendment privilege before the committee (if he had done so). Petitioner argues, however, that if he elected to take the stand in his own behalf at his state trial a different rule would apply—that in that event Indiana could (without violating due process) permit the prosecution to elicit on cross-examination, in attempted impeachment of his assertions of innocence as a witness, the fact that he had pleaded his Fifth Amendment privilege before the committee.

Although there is an Indiana decision holding that where the defendant in a criminal trial testifies in his own behalf it is proper for the State to show on cross-examination that at a prior trial of an alleged

accomplice he was called as a witness and refused to answer a question on the ground that it might incriminate him, it is not at all clear that such a result would be countenanced by this Court in the light of the *Slochower* decision—at least where, as in *Slochower* and in the hypothetical case which petitioner poses, the prior claim of privilege was under the Federal Constitution and the privilege was invoked before a federal body (in the actual Indiana case the claim of privilege had been under the State constitution). *Adamson* v. *California*, 332 U.S. 46, and *Twining* v. *New Jersey*, 211 U.S. 78, on which petitioner rests his assertion that it would not be violative of due process for Indiana to permit the drawing of an adverse inference from his prior claim of privilege if he took the stand at his state trial, are distinguishable. Those cases, holding that a state does not deny due process by permitting comment upon an accused's failure to testify at his trial in explanation or denial of incriminating evidence, did not involve the drawing of an adverse inference from a prior claim of federal privilege in a federal inquiry—the issue on which *Slochower* turned.

3. But whatever assumptions one makes as to Indiana law and whatever room for difference there may be as to the proper application of the *Adamson*, *Twining* and *Slochower* cases in the hypothetical situation petitioner poses, there is a fundamental defect in his argument. If the State's action in permitting the drawing of an adverse inference from petitioner's claim of privilege before the committee would be fundamentally unfair, then this Court would be free to

deal with the matter, if it should become necessary, on review of the state conviction. If it would not be unfair, petitioner has no more basis for claiming a violation of due process in the federal proceeding than he would in the state proceeding. It is incongruous to argue that the potential injury apprehended in the federal proceeding—possible prejudice in the state case—is so grave that the Court is required to intervene on constitutional grounds, and to argue, at the same time, that if the anticipated prejudice were actually to occur the Court would be powerless to deal with it directly—on review of the state conviction. The federal government cannot be required to stay its hand because in a subsequent state proceeding the State might conceivably fail to meet its constitutional obligations.

IV

There cannot be the slightest doubt that the committee would have honored a claim of privilege by petitioner as to any aspect of its inquiry concerning the "fix" of the Lake County grand jury investigation, and that petitioner was well aware of that fact. (The committee, in petitioner's presence, accepted claims of privilege by other witnesses on this subject, and petitioner specifically disclaimed his privilege when asked by the committee if he was invoking it.) This being so, the possibility that the testimony which the committee sought from petitioner might have been admissible against him at his state trial could not make it a violation of his rights for the committee to require him to state what he knew about this matter

or to claim his privilege. The privilege is an option of refusal, not a prohibition of inquiry.

There is no occasion in this case for the Court to reexamine its holdings in *Hale v. Henkel*, 201 U.S. 43, and *United States v. Murdock*, 284 U.S. 141, that the privilege against self-incrimination need not be recognized in a federal inquiry where the feared incrimination relates to a state offense. One who has been at pains to disclaim the privilege against self-incrimination has no standing to challenge a rule which limits its scope. Moreover, petitioner would not be helped in any way by a ruling here that the committee was required to do that which it was ready to do voluntarily if petitioner requested.

V

A witness before a congressional committee who has deliberately and repeatedly disclaimed reliance upon the privilege against self-incrimination may not insist upon its protection under another name.

What petitioner, in essence, sought from the committee was to be granted the protection of the privilege against self-incrimination without invoking it. The law recognizes no such right on the part of a witness before a congressional committee. It is true that a claim of privilege requires no "special combination of words," that a witness "need not have the skill of a lawyer to invoke" it. *Quinn v. United States*, 349 U.S. 155, 162. But it is also true that a witness who would avail himself of the benefits of the privilege must claim it—"in language that a committee may reasonably be expected to understand as

an attempt to invoke" it. *Emspak* v. *United States*, 349 U.S. 190, 194. Certainly it has never been suggested that one who *disclaims* the privilege is entitled to its protection.

Petitioner has in effect attempted to make the Due Process Clause of the Fifth Amendment do service for the Self-Incrimination Clause. Such a "perversion of the Constitution" (*Sacher* v. *United States*, 252 F. 2d 828, 837 (C.A. D.C.), reversed on other grounds, 356 U.S. 576) is not to be sanctioned. The Constitution does not give a privilege against self-incrimination, for the use of those who are willing to claim it candidly, and, in addition, a parallel privilege for the use of those whose only legitimate ground for refusing to answer proper questions is the fear of self-incrimination but who for personal reasons are unwilling to claim the appropriate privilege. The privilege against self-incrimination is a specific guaranty of civil liberty, free of the need for applying such general tests as characterize decision under the Fourteenth Amendment or the Due Process Clause of the Fifth Amendment (*e.g.*, "ordered liberty"). To create a vaguely parallel privilege, claimable by invoking "due process" or similar general concepts, would confuse and dilute the specific guaranty. Nor would the introduction of such a principle into the law serve any useful purpose. As we have shown, every legitimate protection to which petitioner was entitled was available to him under the privilege against self-incrimination, and his claim that he would have been prejudiced if he had asserted the privilege is groundless. It is not unfair to require

a witness in such a situation to forego equivocation and either claim or not claim his privilege. If the witness disclaims all reliance on the privilege, the committee can properly take him at his word.

ARGUMENT

We shall argue, *first*, that the committee's inquiry into whether union funds had been used to "fix" a grand jury investigation into the personal affairs of officers of the union was within the committee's authority under its authorizing resolution, and that the resolution was adopted pursuant to a valid legislative purpose (*infra*, pp. 33–39); *second*, that the fact that a state indictment was pending against the union officers at the time of the inquiry did not, and could not constitutionally, preclude the committee from pursuing its inquiry (*infra*, pp. 39–44); *third*, that petitioner's claim that he would have been prejudiced, had he asserted the privilege against self-incrimination, is groundless (*infra*, pp. 44–51); *fourth*, that the fact that the testimony sought from petitioner might have tended to show consciousness of guilt of the offenses charged in the pending indictment—and on this theory might have been admissible against him at his state trial—did not make it improper or violative of due process for the committee to require him to state what he knew about the subject under inquiry, at least in circumstances where it is plain that a claim of privilege under the Fifth Amendment would have been accepted if asserted (*infra*, pp. 52–54); and, *fifth*, that a witness before a congressional committee who has deliberately and repeatedly disclaimed reliance

upon the privilege against self-incrimination may not insist upon its protection under another name (*infra*, pp. 54–58).

I

THE COMMITTEE'S INQUIRY INTO WHETHER UNION FUNDS HAD BEEN USED BY PETITIONER AND FELLOW UNION OFFICIALS TO "FIX" A STATE GRAND JURY INVESTIGATION INTO THEIR PERSONAL AFFAIRS WAS GERMANE TO THE STUDY WHICH THE COMMITTEE'S AUTHORIZING RESOLUTION, ADOPTED PURSUANT TO A VALID LEGISLATIVE PURPOSE, DIRECTED IT TO CONDUCT

The inquiry in which the committee was engaged when petitioner appeared before it, and to which the questions he refused to answer pertained, was whether funds of the Carpenters Union, entrusted to petitioner's and his fellow union officials' care for the protection and advancement of union interests, had been corruptly diverted to purely personal uses of their own—the bribery of the Lake County prosecuting attorney, Holovachka, to call off a grand jury investigation which he had undertaken into certain allegedly illegal acts of those union officials connected with the so-called "land deal" or "highway scandal" in that county. *Supra*, pp. 6–20. This inquiry came squarely within the committee's mandate from the Senate (*supra*, pp. 4, 5)—

> to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, and to

> determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

And certainly the authorizing resolution was adopted pursuant to a valid legislative purpose. Cf. *McGrain* v. *Daugherty*, 273 U.S. 135, 160–178; *Sinclair* v. *United States*, 279 U.S. 263, 291–295; *Quinn* v. *United States*, 349 U.S. 155, 160–161; *Watkins* v. *United States*, 354 U.S. 178, 187; *Barenblatt* v. *United States*, 360 U.S. 109, 111; and see *Aiuppa* v. *United States*, 201 F. 2d 287, 288–289 (C.A. 6) (resolution creating the Kefauver committee to investigate organized crime in interstate commerce).[16]

Petitioner's argument that the words "to conduct an investigation and study of the extent to which criminal * * * practices or activities are, or have been, engaged in * * *" show that the resolution directed the committee "to undertake the functions of a grand jury" (Br. 72, 34–35), and his related contention that the committee, under the resolution, "assumed powers granted only to the Executive and

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[16] The Court may judicially notice, since it is a matter of common knowledge, that the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C., Supp. II, 401 *ff.*, was a direct consequence of the widespread abuses in the labor-management field brought to light by the committee involved in this case. This is, in any event, amply substantiated by the Act itself and its legislative history. See § 2(b), 73 Stat. 519, 29 U.S.C., Supp. II, 401(b) ("Declaration of Findings, Purposes, and Policy"); S. Rept. No. 187, 86th Cong., 1st sess., on S. 1555, pp. 2, 6, 9, 10, 13, 14, 15, 16, 17, 70, 118; H. Rept. No. 741, 86th Cong., 1st sess., on H.R. 8342, pp. 1–2, 6, 9, 11–12, 13, 76, 83, 96, 99, 105; 105 Cong. Rec. 5983, 15521.

the Judiciary, and thus acted beyond its jurisdiction" (Br. 34–35, 70, 74–76), are without substance. An authorization by a House of Congress to one of its committees to investigate the extent to which criminal activities are or have been engaged in in a field over which Congress has authority to legislate (for example, as in this case, interstate commerce), *for the purpose of determining whether remedial legislation is necessary and reporting thereon to Congress*, can in no sense be said to vest in the committee "the functions of a grand jury." The fact that there might be overlap between the areas of activity of such a committee and those of a grand jury—a not infrequent occurrence—could not make improper an investigation conducted by the committee in pursuance of its authorized *legislative* purpose.[11]

Equally insubstantial is his argument (Br. 70–73) that the committee's purpose in interrogating him was solely to "expose" him, without reference to any legitimate legislative purpose. Cf. *Watkins* v. *United States*, 354 U.S. 178, 200 ("We have no doubt that there is no congressional power to expose for the sake of exposure."). The argument is based upon the remarks of the committee chairman—made at the

[11] Cf. *Barenblatt* v. *United States*, 360 U.S. 109, 111–112: "Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the *exclusive* province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are *exclusively* the concern of the Judiciary. Neither can it supplant the Executive in what *exclusively* belongs to the Executive. * * *" (Emphasis added.) And see *Tenney* v. *Brandhove*, 341 U.S. 367, 378.

conclusion of the hearings—in which he made a "statement" for the record summarizing the evidence which the committee had heard and reciting certain conclusions to which he believed the evidence pointed. *Supra*, p. 21. Referring to a "conspiracy to subvert justice in the State of Indiana", which he said the evidence before the committee tended to indicate had been entered into by "certain high officials of both the Teamsters and the Carpenters Unions", the chairman said (R. 153-154):

> All the facts regarding this conspiracy undoubtedly have not been developed by the committee.
>
> Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter.

Petitioner's attempt to demonstrate from these remarks a purpose on the part of the committee to "expose for the sake of exposure" is refuted by Senator McClellan's trial testimony concerning the statements in question. When he made these remarks, as the Senator pointed out, "Our legislative function had been performed * * *."[12] Continuing, he observed

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[12] R. 165; *supra*, p. 22. The Senator described the committee's legislative function as the seeking of "information regarding crimes and improper activities." *Ibid.* Petitioner criticizes this aspect of the chairman's statement, saying that it evidences a mistaken conception of the committee's duties as embracing "functions, not of legislatures, but of law enforcement officers, of prosecutors, and of grand juries" (Br. 76). We have pointed out, however, that the resolution creating the committee directed it to investigate the extent to which

that "evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union," and that it had been the practice of the committee to "cooperate with state and federal officials where any evidence [was] developed before us with respect to a crime having been committed." It was for this reason, the Senator stated, that he made the "statement * * * to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them." R. 165; *supra*, p. 22.

In short, the committee's legislative function having been completed (through the gathering of information bearing on potential new federal legislation) and the hearings concluded, the chairman summarized for the record what the evidence tended to establish, and indicated that the committee would be willing to cooperate with Indiana law enforcement officials by making the record of the committee's proceedings available to them if they wished to investigate the details of what appeared to be a state offense (distinct from the offenses charged in the pending indictment), evidence of which had been uncovered by the committee in the course of its discharge of its federal legislative duties. Cf. *Elkins* v. *United States*, 364 U.S. 206, 221. We submit that no purpose to "expose

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"criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations * * *." *Supra*, pp. 33-34. As to the validity of the authorization as a legislative function, see *supra*, pp. 34-35.

for the sake of exposure" can reasonably be inferred from the chairman's statements.

Furthermore, the *Watkins* decision itself is a complete answer to petitioner's contention (354 U.S. at 200):

> But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.[15]

There is, finally, no merit to the argument (Pet. Br. 73–74) that the committee did not need petitioner's testimony for any fact-finding purpose and that his interrogation was consequently for no legitimate legislative purpose. A congressional committee must be its own judge of the amount of evidence needed to enable it to discharge its legislative responsibilities and report back to its parent body with findings and recommendations. It would be inappropriate for the judicial branch to undertake to review the exercise of so peculiarly discretionary a determination. Moreover, the "proof" relied on by petitioner as demonstrating that the committee had no need for his testimony—that in its second interim report the committee was able to report, notwithstanding

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[15] Cf. *Barenblatt v. United States*, 360 U.S. 109, where the Court sustained a conviction for contempt of a congressional committee in a case in which a "declared purpose of the investigation was to identify to the people of Michigan the individuals responsible for the, alleged, Communist success there." 360 U.S. at 158 (dissent of Mr. Justice Black).

petitioner's refusal to answer questions pertinent to the subject, that it found from the evidence that Raddock was used by petitioner "as a fixer in an attempt to head-off the indictment of" himself and his co-officials of the Carpenters Union (Br. 73)—overlooks the fact that the committee had sought to ascertain the nature of the connection of the Teamsters Union with the "fix" about which it was inquiring, and that its efforts in this respect were largely frustrated by petitioner's and other witnesses' refusal to testify. See note 3, *supra*, pp. 9–10.

II

THE FACT THAT AT THE TIME OF THE COMMITTEE'S INQUIRY THERE WAS PENDING AGAINST PETITIONER A STATE INDICTMENT TO WHICH THE INFORMATION SOUGHT BY THE COMMITTEE INDIRECTLY RELATED DID NOT, AND CONSTITUTIONALLY COULD NOT, PRECLUDE THE COMMITTEE FROM PURSUING ITS INQUIRY

Petitioner's contention (Br. 41–47) that the committee attempted to "pretry a pending criminal case" (Br. 41) is wholly without merit. The "criminal case" referred to was the pending prosecution of petitioner and his fellow union officials Blaier and Chapman, in *Marion* County, for bribing and conspiring to bribe an Indiana highway official, Doggett, in connection with the so-called "land deal" or "highway scandal" in Lake County. *Supra*, pp. 6–7. The committee scrupulously refrained from inquiring about the subject matter of that indictment. *Supra*, pp. 13–14, 16–17. It neither questioned the petitioner about it nor offered evidence from other sources.

What the committee did seek to ascertain was whether union funds had been used to bribe the *Lake County prosecutor* to abandon a grand jury investigation. *Supra*, pp. 7–20. That grand jury investigation, it is true, involved an inquiry into charges relating to the highway matter which became the subject of the Marion County indictment, but otherwise the committee's inquiry was totally unrelated to the latter affair.[14] It distorts the record to say that the committee attempted to "pretry a pending criminal case."

There is only one way in which answers from petitioner concerning the possible obstruction of justice in Lake County could affect the trial of the Marion County indictment. It may well be—we do not dis-

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[14] As noted in the Statement, *supra*, pp. 14, 17, the committee chairman, during the testimony of Blaier, stated that the witness, as a matter of committee "rule or policy," would not be interrogated on the "subject matter of the indictment," and the same policy was announced with respect to petitioner during the latter's appearance on the stand. Despite the efforts of the attorney for the two witnesses to secure an "understanding" with the chairman that the area to be avoided under this self-imposed committee policy would include the matter of the "fix" of the Lake County grand jury investigation (on the ground that that subject, though not directly related to the subject of the indictment, was related to it "by indirection" (R. 86)), the chairman declined to enter into any such understanding, and both witnesses were, in fact, extensively questioned concerning the matter of the "fix". *Supra*, pp. 13–20. Petitioner was thus at no time under a misapprehension that the subject of the "fix," because of the connection between that matter and the subject of the indictment which his counsel pointed out, was not going to be inquired into by the committee under its "rule". There was in other words no confusion as to the fact that the committee intended to inquire, and did inquire, concerning the suspected "fix" of the Lake County investigation.

pute the point—that if petitioner, in response to the committee's questions, had admitted using funds of the Carpenters Union to bribe the Lake County prosecutor to halt the investigation, his admission would have been admissible at the Marion County trial as evidence of consciousness of guilt (*i.e.*, of the "land deal" charges which the Lake County grand jury had under investigation).[18] Cf. *Davidson* v. *State*, 205 Ind. 564, 569 (1933); 2 Wigmore, *Evidence* (3d ed.) §§ 276, 278; 1 Wharton, *Criminal Evidence* (12th ed.), § 201 *ff*. On the other hand, if he had denied such conduct, his testimony would have been irrelevant to the charges of the pending indictment and so inadmissible under any theory. But whatever the propriety of petitioner's refusal to answer the particular questions (see pp. 44–58, *infra*), the pendency of the Marion County indictment at the time of the committee hearing could in no event have precluded the committee from pursuing its inquiry into the misuse of union funds in obstructing justice in another county, which inquiry was clearly pertinent to a proper federal legislative purpose.

This would be true even if the pending indictment had been a federal one. *Sinclair* v. *United States*, 279 U.S. 263, 295. In that case, at the time of Sinclair's appearance before the Senate Committee on Public Lands and Surveys (in connection with the Teapot Dome investigations), a joint resolution had been adopted by the Senate directing the President

[18] We show *infra*, pp. 52–53, that the committee would not have insisted on answers to the questions if petitioner had claimed the privilege against self-incrimination.

to cause suit to be instituted for the cancellation of certain oil leases (including one to the Mammoth Oil Company, of which the witness was president) and to "prosecute such other actions or proceedings, civil and criminal, as were warranted by the facts" (279 U.S. at 289). Pursuant to the resolution, a suit "charging conspiracy and fraud" had been commenced against the witness's company, and "application had been made for a special grand jury to investigate the making of the lease" (at 289-290). Sinclair declined to answer the committee's questions on the ground that "the Senate by the adoption of the joint resolution had exhausted its power and Congress and the President had made the whole matter a judicial question which was determinable only in the courts" (at 290). On appeal by the witness from his conviction for contempt of the Senate, this Court said (at 295):

> Neither Senate Joint Resolution 54 nor the action taken under it operated to divest the Senate, or the committee, of power further to investigate the actual administration of the land laws. It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.

While the pending suit involved in that case was a civil action, as petitioner observes (Br. 46, 47), it is evident that the action had unmistakable criminal

overtones; application had already been made for a special grand jury. Certainly, the rationale of the decision applies to a situation in which the pending action is a criminal prosecution.[16]

In the present case, moreover, the Supremacy Clause provides independent refutation of petitioner's argument. The pending prosecution here involved was a *state* prosecution. The Supremacy Clause, we submit, is inconsistent with the notion that a committee of Congress, inquiring into a matter undeniably germane to a valid mandate from its parent body, can be frustrated in its investigation by the fact that the information it seeks may happen also to be rele-

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[16] *Delaney* v. *United States*, 199 F. 2d 107 (C.A. 1), relied on by petitioner (Br. 42, 44, 45, 47), does not aid him; indeed, to the extent that it is relevant, it supports the government. In that case, after the defendant had been indicted for alleged improprieties committed during his term of office as Collector of Internal Revenue for the District of Massachusetts, a House committee, previously established to inquire into the administration of the internal revenue laws, began an intensive investigation into the defendant's alleged derelictions. Many of the witnesses who appeared before the committee (the defendant himself was not called) had testified before the grand jury which returned the indictment, and the hearings afforded the public a preview of the prosecution's case. The court of appeals reversed the defendant's conviction and remanded for a new trial on the ground that the trial court had erred in failing to grant a continuance of the trial until the prejudicial effect of the publicity which had resulted from the committee's hearings had had a chance to wear off. The court made it clear, however, that it did not question the power of the committee to conduct its investigation. The court said (at 114): "We mean to imply no criticism of the action of the King Committee. We have no doubt that the committee acted lawfully, within the constitutional powers of Congress duly delegated to it."

vant to charges made in a pending state indictment. The pendency of such an indictment cannot, consistently with the Constitution, so immunize the indicted person from the reach of federal power as to make it improper for a congressional committee even to ask him questions having common relevance to the indictment and the committee's sphere of interest. The witness may claim his Fifth Amendment privilege,[17] but he cannot successfully contend that the committee has no right to ask him questions.

III

PETITIONER'S CLAIM THAT HE WOULD HAVE BEEN PREJUDICED, HAD HE ASSERTED THE PRIVILEGE AGAINST SELF-INCRIMINATION, IS GROUNDLESS

Petitioner argues, however, that if he had claimed the privilege against self-incrimination before the committee "that fact could have been used against him at the trial of the Marion County indictment" (Br. 39). This, he argues, made it a violation of due process for the committee to put him in a position where he was obliged either to claim privilege or to testify under the threat of the contempt sanction. The suggestion appears to be that there is a privilege not to claim the privilege and yet to realize whatever benefits would attach to its assertion.

We note at the outset that this line of reasoning necessarily assumes that this Court would be pre-

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[17] Whether the committee would be required to honor the claim need not be considered, since here it is clear that the committee would have accepted the claim, if made, and, in any event, the privilege was not only not claimed, but was affirmatively disclaimed. See *infra*, pp. 52–54.

pared to overrule its unanimous decision in *United States* v. *Murdock*, 284 U.S. 141, holding that the privilege against self-incrimination need not be recognized in a federal inquiry where the feared incrimination relates to a state offense. For if a witness may be compelled to give testimony before a federal body which would incriminate him under state law, it can hardly be constitutionally objectionable for the federal authority to excuse him from the necessity of giving testimony if he is prepared to claim the privilege against self-incrimination. As we point out *infra*, pp. 52–54, there is neither need nor occasion to reconsider the *Murdock* rule in this case, in which petitioner not only did not claim the privilege against self-incrimination, but affirmatively and repeatedly disclaimed it. Petitioner's contention, at all events, falls of its own weight.

1. In the first place, even if his argument were sound, it would be a sufficient answer, we believe, that no such suggestion was advanced before the committee, either by petitioner or his counsel, as a reason why he ought not in fairness be called upon to plead his privilege. A proper respect for the processes of the committee required that if this were petitioner's reason for declining to invoke his privilege—if he truly felt that he was confronted with the dilemma he now conceives—either he or his attorney should have apprised the committee of the difficulty so that an appropriate ruling might be made. The only reason which petitioner gave to the committee was quite different: "concern" that there "be no actual or apparent violation on [his] part" of the

provision of the A.F.L.-C.I.O. Code of Ethics which states that a union official who invokes his Fifth Amendment privilege in order to avoid official scrutiny into alleged corruption on his part has no right to continue to hold his union office. R. 147; *supra*, p. 20.

2. As to the merits of this contention, we think it has been clear since *Slochower* v. *Board of Education*, 350 U.S. 551, if it was previously doubtful, that it is violative of due process for any government, state or federal, to permit the use against a person of an adverse inference drawn from his invocation of his Fifth Amendment privilege. Cf. *Grunewald* v. *United States*, 353 U.S. 391, 421–424; *Stewart* v. *United States*, 366 U.S. 1, 7, note 14; *Cohen* v. *Hurley*, 366 U.S. 117, 125. Indiana, for example, certainly could not have adduced at petitioner's trial, as part of its case in chief, the fact that petitioner had pleaded his Fifth Amendment privilege before the committee (if he had done so). The *Slochower* case is decisive of at least this much, and indeed we do not understand petitioner to contend otherwise.

Petitioner argues, however, that a different rule would apply if petitioner "elected to take the stand on his own behalf" at his state trial. It is the "law of Indiana", he says, "that a plea of self-incrimination could be the subject of adverse inference if the witness elected to take the witness stand on his own behalf at a subsequent trial". "And of course", he further states, "such an adverse inference at a trial in the Indiana courts would not violate the Fourteenth Amendment". For the latter proposition he cites

Adamson v. *California*, 332 U.S. 46, and *Twining* v. *New Jersey*, 211 U.S. 78 (Br. 39).

Although neither of the Indiana decisions cited by petitioner in support of his statement as to the "law in Indiana" is in point,[18] Indiana has held that where the defendant in a criminal trial testifies in his own behalf it is not improper for the prosecution to show on cross-examination that he was called as a witness at a prior trial of an alleged accomplice and refused to answer a question on the ground that it might incriminate him. *Crickmore* v. *State*, 213 Ind. 586, 592–593 (1938). The court reasoned that, although it would have been improper for the prosecutor to comment upon the accused's prior invocation of privilege if he had not testified, it was permissible to do so where he had taken the stand, because "[b]y becoming a witness, he waived his right not to be required to give evidence against himself". 213 Ind. at 593. The rationale of the decision would thus appear to be that the witness's prior invocation of privilege in some manner involved an admission of guilt ("evidence against himself"), which it was proper for the state to adduce on cross-examination

[18] *State* v. *Schopmeyer*, 207 Ind. 538, 542–543, and *Watts* v. *State*, 226 Ind. 655, 663, reversed on other grounds *sub nom. Watts* v. *Indiana*, 338 U.S. 49, which petitioner cites for the rule that in Indiana a plea of self-incrimination can be the subject of adverse inference if the witness takes the stand on his own behalf at a subsequent trial (Br. 39), merely applied to the particular situations involved in those cases the well settled rule that a defendant who takes the stand on his own behalf at a criminal trial thereby waives his privilege against self-incrimination and may be cross-examined on the subject matter of his direct testimony like any other witness.

in order to impeach the credibility of his assertions of innocence as a witness in his own behalf.

We note, in the first place, that the claim of privilege involved in the *Crickmore* case was a claim under the Indiana Constitution;[18] the case thus did not involve the question whether Indiana could have used for impeachment purposes a witness's prior claim before a federal body of his *federal* privilege under the Fifth Amendment. But if we assume from the rationale of the decision that a similar result would be reached in a case in which (as in the hypothetical case which petitioner poses) the prior claim of privilege was before a federal body and under the Federal Constitution, it is not at all clear that such a result would be countenanced by this Court in the light of the *Slochower* decision, *supra*, 350 U.S. 551. For the precise holding of *Slochower* was that it is fundamentally unfair, and hence violative of due process, for a state to draw or permit the drawing of just such an adverse inference as Indiana permitted to be drawn in the *Crickmore* case from the invocation before a federal tribunal or agency of one's constitutional privilege under the Fifth Amendment not to be a witness against oneself. Cf. *Grunewald* v. *United States*, *supra*, 353 U.S. at 415–424; *Nelson* v. *Los Angeles County*, 362 U.S. 1, 7–8.[19]

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[18] Article 1, § 14, forbidding compulsory self-incrimination under state law in language similar to that of the Fifth Amendment.

[19] In *Grunewald* (reversing a federal conviction because the prosecution had been permitted, on cross-examination of the accused, to show that he had claimed his Fifth Amendment privilege before a grand jury when asked questions which he

The *Adamson* and *Twining* decisions—relied on by petitioner (see *supra*) for his statement that if petitioner elected to take the stand at his Indiana trial it would "not violate the Fourteenth Amendment" for the State to permit the drawing of an adverse inference from his prior plea of privilege—are distinguishable. Those cases held that a state does not deny due process by permitting comment upon an accused's *failure to testify at his trial* in explanation or denial of incriminating evidence. *Adamson* v. *California*, 332 U.S. 46, 48–49; *Twining* v. *New Jersey*, 211 U.S. 78, 90–91. But for a state to permit the drawing by a jury of an adverse inference from an accused's affirmative act of invoking his Fifth Amendment privilege in a prior federal proceeding involves discrete considerations. Cf. *Cohen* v. *Hurley*, 366 U.S. 117, 125, 127–129. The distinction explains the difference in result between the *Adamson* and *Twining*

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answered in a way consistent with innocence at the trial), the decision was predicated on the Court's supervisory power over the administration of federal criminal justice (at 424). While the case is thus not a square authority that such a use of a defendant-witness's prior claim of privilege would violate due process, it is to be noted that the Court reaffirmed its *Slochower* decision (which did proceed on due process grounds) and again condemned the practice of drawing or permitting the drawing of an adverse inference from the making of such a claim (at 421–424).

In *Nelson*, the Court declared that in *Slochower* a "built-in" "inference of guilt, derived solely from a Fifth Amendment claim, we held to be arbitrary and unreasonable." 362 U.S. at 7. *Nelson* turned (like *Beilan* v. *Board of Education of Philadelphia*, 357 U.S. 399, and *Lerner* v. *Casey*, 357 U.S. 468), not on invocation of the constitutional privilege, but on failure of an employee to answer his public employer's legitimate questions.

decisions, on the one hand, and *Slochower* v. *Board of Education, supra,* on the other. Cf. *Ullmann* v. *United States,* 350 U.S. 422, 426–427.

3. But whatever assumptions one makes as to Indiana law and whatever room for difference there may be as to the proper application of this Court's decisions in the *Twining, Adamson* and *Slochower* cases in the hypothetical situation petitioner poses, there is a fundamental defect in his argument. Petitioner contends that it is fundamentally unfair for a committee of Congress to ask him questions, however relevant to the committee's authorized purposes, and to require him either to testify, upon pain of contempt if he refuses, or to claim privilege. This is so, petitioner says, because the very fact of claiming privilege might in certain circumstances (*i.e.* if he should take the stand as a witness in a subsequent state proceeding) be used to his detriment by the State of Indiana. It is perfectly plain, therefore, that the only injury which petitioner apprehends or to which he can point is the injury which he claims the State might later inflict. The fundamental unfairness of which he complains could result only from the State's action—from its permitting an Indiana jury to draw an adverse inference from a prior claim of privilege. If this would be fundamentally unfair, then this Court would be free to deal with the matter, if it should become necessary, on review of the state conviction. If it would not be unfair, petitioner certainly has no more basis for claiming a violation of due process in the federal proceeding than he would in the state proceeding. In short, we fail to see how

petitioner can ask this Court to frustrate the federal inquiry into a matter of legitimate federal concern when the only claim of violation of petitioner's rights stems from the consideration that if the federal inquiry goes forward the State might conceivably pursue a course which would be fundamentally unfair. It is plainly incongruous to suggest that the potential injury apprehended in the federal proceeding—possible prejudice in the subsequent state case—is so grave that the Court is required to intervene on constitutional grounds, and to argue, at the same time, that if the anticipated prejudice were actually to occur the Court would be powerless to deal with it on review of the state conviction. If a question of "due process" proportions arises out of an impermissible inference drawn from a claim of privilege, then manifestly that question can be raised and decided in the proceeding in which the injury takes place. The federal government cannot be required to stay its hand because in a subsequent state proceeding the State might conceivably fail to meet its constitutional obligations.

IV

THE FACT THAT THE TESTIMONY WHICH THE COMMITTEE SOUGHT FROM PETITIONER MIGHT HAVE BEEN ADMISSIBLE AGAINST HIM AT HIS STATE TRIAL DID NOT MAKE IT AN INVASION OF PETITIONER'S RIGHTS FOR THE COMMITTEE TO REQUIRE HIM EITHER TO ANSWER OR TO RELY UPON HIS PRIVILEGE AGAINST SELF-INCRIMINATION. AT ALL EVENTS, HAVING DISCLAIMED THE PRIVILEGE AGAINST SELF-INCRIMINATION, HE HAS NO STANDING TO CHALLENGE THE *MURDOCK* RULE

We have pointed out that the committee, in petitioner's presence, recognized and accepted claims by witnesses Raddock and Sawochka of their privilege against self-incrimination when they were asked questions relating to the "fix" of the Lake County grand jury investigation. *Supra*, pp. 10, 12, 13.[n] Similarly, during the questioning of Blaier, who also testified in the presence of petitioner and who was represented in the proceedings by the same counsel as petitioner, the right of the witness to invoke his privilege against self-incrimination in respect of any phase of that subject was at all times recognized. *Supra*, p. 15, including note 7. Finally, on repeated occasions during the interrogation of petitioner himself, the committee specifically asked whether he was invoking his privilege against self-incrimination, and he in each instance specifically declared that he was not. *Supra*, p. 20; R. 125, 127, 130, 135, 146. There

[n] In addition, the committee had on a previous occasion (in petitioner's absence) accepted a claim of privilege as to this matter made by Charles Johnson, Jr., a Carpenters Union official who the committee had information was involved in the "fix." (See note 3, *supra*, p. 9.) R. 52–56.

cannot be the slightest doubt, then, that the committee would have honored a claim of privilege by petitioner as to any aspect of this subject of inquiry, and that petitioner was well aware of that fact.

This being so, the possibility that the testimony which the committee sought from petitioner might have been admissible against him at his state trial (depending upon what the testimony was) could not make it a violation of petitioner's rights for the committee to require him to state what he knew about the matter under inquiry. The privilege against self-incrimination is "an *option of refusal*, not a prohibition of inquiry" (8 Wigmore, *Evidence* (3d ed.), § 2268 [emphasis in the original]). It must, in short, be claimed. *Quinn* v. *United States*, 349 U.S. 155, 162–165; *Emspak* v. *United States*, 349 U.S. 190, 194.

In *Hale* v. *Henkel*, 201 U.S. 43, 68–69, and *United States* v. *Murdock*, 284 U.S. 141, 149, this Court held that the privilege against self-incrimination need not be recognized in a federal inquiry where the feared incrimination relates to a state offense. Thus, the committee, in accepting the claims of privilege of Raddock and Sawochka and evidencing its intent to do the same in petitioner's case (if he chose to exercise his privilege), went further in protecting the witnesses' rights than it was required to go under the decisions of this Court—as petitioner comes close to acknowledging (Br. 49–50). Petitioner now asks the Court to reexamine the rule of those cases (Br. 50–60); he asks the Court, in other words, to hold in this case that the committee was *required* to do what it did in the case of Raddock and Sawochka and what

it indicated it was prepared to do in his own case, *i.e.*, honor a claim of privilege based on feared incrimination under state law. Obviously, however, it would be most inappropriate to adopt petitioner's suggestion. When a witness in a federal proceeding *claims* his privilege against self-incrimination (in a case presenting this issue of federalism) *and the claim is rejected,* it will be time enough for the Court to reconsider the rule of the *Hale* and *Murdock* cases. One who has been at pains to disclaim the privilege against self-incrimination has no standing to challenge a rule which limits its scope. Moreover, petitioner would not be helped in any way be a ruling here that the committee was required to do that which it was ready to do voluntarily if petitioner requested.

V

A WITNESS BEFORE A CONGRESSIONAL COMMITTEE WHO HAS DELIBERATELY AND REPEATEDLY DISCLAIMED RELIANCE UPON THE PRIVILEGE AGAINST SELF-INCRIMINATION MAY NOT INSIST UPON ITS PROTECTION UNDER ANOTHER NAME

What petitioner, in essence, sought from the committee—as the district court recognized (see *supra*, pp. 22–23)—was to be granted the protection of the privilege against self-incrimination without invoking it. We submit that the district court was clearly correct in holding that the law recognizes no such equivocal right on the part of a witness before a congressional committee.[22] It is true, of course, that "a claim

[22] Petitioner argues (and we agree) that he had a right to rely, in his appearance before the committee, on any privilege

of the privilege does not require any special combination of words. Plainly a witness need not have the skill of a lawyer to invoke the protection of the Self-Incrimination Clause." *Quinn* v. *United States*, 349 U.S. 155, 162. But it is equally true that a witness who would avail himself of the benefits of the privilege must claim it—"in language that a committee may reasonably be expected to understand as an attempt to invoke" it. *Emspak* v. *United States*, 349 U.S. 190, 194. Certainly it has never been suggested that one who *disclaims* the privilege is entitled to its protection. Having for personal reasons deliberately and repeatedly disclaimed reliance on the privilege against self-incrimination, petitioner cannot now be heard

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available to him under the law and that he was not limited to pleading his privilege against self-incrimination (Br. 76–84). The district court did not hold otherwise. Judge Morris did not say that the only privilege which a witness can properly invoke as a reason for not answering a committee question is the privilege against self-incrimination. What he indicated was that where it is apparent from the circumstances that what a witness is in substance seeking is to be relieved from the necessity of giving self-incriminating testimony he must invoke his Fifth Amendment privilege, and may not secure the relief for which that privilege is designed by invoking some other privilege or supposed privilege, protecting other interests. That this was all that the judge meant is confirmed by his statement that "[t]he Sacher case" was "absolutely dispositive of what is involved in this case" (R. 174). There can be no doubt that the "Sacher case" to which the court referred was *Sacher* v. *United States*, 252 F. 2d 828 (C.A. D.C.), reversed on other grounds, 356 U.S. 576. The decision (see *infra*, p. 56, and note 9, *supra*, pp. 22–23) held that a witness who wishes to shield himself from supplying incriminating information must invoke his Fifth Amendment privilege. As we argue in the text, the decision was clearly correct, and we know of no case which has ever suggested the contrary.

to complain that the committee should not have required answers to its questions because they might have tended to incriminate him.

In *Sacher* v. *United States*, 252 F. 2d 828, 837 (C.A.D.C.), reversed on other grounds, 356 U.S. 576, the court of appeals struck down an attempt by another witness before a congressional committee to secure the benefits of the Fifth Amendment without invoking it. There the witness had attempted to make the First Amendment do service for the Fifth. "The Fifth Amendment," the court held (at 837)—

> plainly—and properly—was intended as a shield against self-incrimination; the First Amendment was not. The use of the First Amendment to shield one from supplying "obviously incriminating information about himself" would be a perversion of the Constitution, needless so long as the Fifth Amendment stands. * * *

Petitioner has in effect attempted to make the Due Process Clause of the Fifth Amendment do service for the Self-Incrimination Clause. This, we submit, was equally a perverse use of the Constitution, which likewise ought not be permitted to succeed.

Stripped of exaggeration, what petitioner's argument comes to is that a witness before a congressional committee who would avail himself of the protection of the privilege against self-incrimination may do so in either of two ways. He may claim the privilege forthrightly and in unambiguous terms. Or he may, while disclaiming the privilege, seek its benefits under another name and in a different guise. We submit that the bare statement of the proposition contains its

own refutation. The Constitution does not give a privilege against self-incrimination, for the use of those who are willing to claim it candidly, and, in addition, a parallel privilege for the use of those whose only legitimate ground for refusing to answer relevant and proper questions is the fear of self-incrimination but who for personal reasons are unwilling to claim the appropriate privilege. The introduction of such a doctrine into the law would make the proper limitations on the use of the privilege against self-incrimination undesirably vague and lead to endless confusion. The privilege against self-incrimination is a specific guaranty of civil liberty, free of the need for applying such general tests as characterize decision under the Fourteenth Amendment or the Due Process Clause of the Fifth Amendment (*e.g.*, "ordered liberty"). To create a vaguely parallel privilege, of undefined scope, which a witness could claim by invoking "due process" or similar general concepts, would confuse and dilute the specific guaranty.

Nor would the introduction of such a principle into the law serve any useful purpose. We have shown that every legitimate protection to which petitioner was entitled was available to him under the privilege against self-incrimination, and that his claim that he would have been prejudiced if he had asserted the privilege is groundless. It is not unfair to require a witness in such a situation to forego equivocation and either claim or not claim his privilege. Where his statements are contradictory, yet he fully understands his position, the committee is entitled to insist

that he take his stand on the Self-Incrimination Clause or disclaim reliance on it. As we have noted, *supra*, pp. 54–55, this Court has repeatedly held that the privilege is not automatic but must be claimed by the witness. If, like petitioner, the witness disclaims all reliance on the privilege, the committee can properly take him at his word.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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SEPTEMBER 1961.

U.S. GOVERNMENT PRINTING OFFICE: 1961